



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's son, AP, attended the hearing and spoke on behalf of his father, the landlord (the "**landlord**"), had the opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing, 1:30 p.m. to the conclusion of the hearing, at 2:13 p.m. The teleconference system indicated only the landlord and I called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing.

Service upon Tenant

The tenant did not attend the hearing; therefore, the matter of serving the Notice of Dispute and evidence package must be addressed. Rule 10 of the Rules govern service requirements. Expedited hearings are for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Rule 10, instructions for service in applications made pursuant to s. 56 of the *Act*, "Expedited Hearings", requires that the landlord must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, serve each tenant with the stated documents including the Notice of Dispute Resolution Proceeding and evidence. Rule 10.3 states:

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution.
- the Respondent Instructions for Dispute Resolution;
- the Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

The Director's Order of June 26, 2019, provides timelines for service. Since service and response time limits are shorter than usual, the permitted methods of service are restricted. If the hearing date is between six (6) and eleven (11) days after the date the application is made, the applicant must serve the package:

- by leaving a copy with the person
- if the person is a landlord, by leaving a copy with an agent of the landlord, or
- if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

If the hearing date is between 12 and 16 days after the date the application is made, the permitted service methods are:

- by attaching a copy to a door or other conspicuous place at the address at which the person resides
- if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord, or
- by emailing a copy to an email address provided as an address for service by the person.

If the hearing date is between seventeen (17) days or more after the date the application is made, the permitted service methods are any of the methods set out above, or by sending a copy by registered mail to the tenant's residential address.

The landlord submitted the application on January 21, 2022. The RTB scheduled the hearing for February 17, 2022, 25 days later.

The landlord testified he served the tenant in person with the Notice of Hearing and Application for Dispute Resolution on February 1, 2022, at 6:40 p.m. and the primary evidence package served on February 1, 2022, at 9:00 p.m., sixteen days (16) days prior to the hearing in compliance with the third (3rd) method. When the tenant refused to accept and sign the Proof of Service Expedited Hearing form, the landlord posted the Notice to the door (photo evidence submitted). A second evidence package was served to the tenant February 7, 2022, at 1:55 p.m.

The landlord provided a witnessed Proof of Service of Expedited Hearing (RTB-9) form and photos of the Notice and Evidence package taped to the door on February 1, 2022.

In consideration of the landlord's evidence, I find the landlord served the tenant on February 1, 2022, with the Notice of Hearing and Application for Dispute Resolution in compliance with the *Act*.

Tenant's Evidence

The tenant did not attend the hearing and did not submit any evidence to the file.

Issues to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided the following undisputed affirmed testimony. The landlord submitted video, audio, recordings of multiple police arrests, warrants served upon the property, photos of the arrests, and complaints from neighbors. Not all the evidence is referenced in the Decision.

The parties entered into an oral month-to-month tenancy agreement starting November 1, 2021. Monthly rent is \$1000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500.00. The landlord still retains this deposit.

The landlord provided the following written submissions in his application and testified to its truthfulness.

On Jan 20, white smoke preceded to enter the household where the landlord, wife, children, and eight-week-old puppy are living. The landlord agent, AP, went to knock on the tenant's door and immediately saw exposed sharp edge razors on the ground by the footstep. When the door opened by a person living in the unit with the tenant, clear evidence of drug usage and multiple (5) people in the room were under the influence of cocaine/fentanyl/heroin. [The tenant] was unresponsive to respond and as such AP called 911 and requested police and ambulance. Police arrived with a battering hammer because they refused to open the door and ultimately opened the door once warning were given that were going to enter in with the hammer. **When police asked [tenant] what drugs they were using, [tenant] responded with "everything and anything".**

Police entered the unit and saw syringes, razors, and clear evidence that multiple people living in the one-bedroom suite were under the influence. A person in the bedroom was barricaded in the bathroom and refused to come out, and the police threatened to use the hammer to enter once again, and the individual inside was smoking cocaine/fentanyl/heroin according to police. The police had to leave the unit as the smoke was so strong that they had to wait for it to disperse.

As the police identified the residents, two individuals staying with [tenant] had multiple outstanding warrants and were arrested. **The responding officers in their words stated a significant risk to health and property is present. The responding officers stated the file will be ready as soon as possible to support the landlord as the inhalation of heroin/cocaine/fentanyl smoke is a significant health hazard to the child living directly above, members of the household where the smoke can climb into the house and the 8-week-old puppy.**

The individuals residing with [tenant] continued to smoke cigarettes and police were unable to do anything about the smoke inhalation, drug usage inside the unit and referred me to contact Tenancy Branch. An officer even asked their supervisor if the landlord could even forcibly remove just because of the horrible conditions. Visibly I saw multiple (non-temporary) beds set up in the living room. Hours after the police had left the tenant himself had said outside to a neighbor I am not leaving until I'm forcibly removed.

We request an immediate order of possession, we do not request monetary amounts at this time, as the risk to the property (as drugs for consumption could end on the ground for the puppy to accidentally eat or be cut and exposed to disease by used straight edge razors by anyone. The inhalation of cocaine/fentanyl/heroin and even cigarette smoke from inside the unit poses an immediate and significant risk to children, puppy and family members of the landlord.

Even as police had left we continue now to hear items falling, breaking and walls being banged indicating there could be damage to the unit. **We fear that the unit will be severely damaged and our health severely compromised if a hearing isn't granted as soon as possible.** [reproduced as written]

The landlord agent (AP) had given the tenant [XX] a notice to enter the home on Monday Jan 17, indicating he will checking the unit for repairs and it's condition for Friday January 21 at 10-11 am. Upon entering the unit three individuals were in the unit and one individual held a knife pointed u in his hand in a threatening manner. Upon which [XX] Police came to support the notice to enter the unit and took the knife away from the individual while the landlord agent completed looking at the basement unit's condition. [reproduced in part; reproduced as written]

The landlord submitted a Freedom of Information request to the police on February 2, 2022 (evidence submitted). The documentation was unavailable at the time of the hearing.

AP provided multiple examples of disruption, threats, and drug use by the tenant, the unauthorized occupants, and guests. AP testified that questionable people come and go from the unit at all times of the day and night. The tenant brazenly admitted to drug use when questioned by the police stating he uses “everything and anything”. A drug overdose resulted in a call to 9-1-1 and the police and ambulance attending. There is confirmed evidence of police involvement with the tenant on multiple occasions. The landlord provided photos as well as video and audio of police activities in the suite, as well as an undercover operation that ended with a warrant served and arrests.

AP stated that when the police responded to the January 20 incident and the bathroom door finally opened after the police threatened to break the door down, a “plume of cocaine/fentanyl escaped” and the police had to leave the premises immediately and reenter.

On February 2, 2022, the tenant parked his vehicle on the landlord’s front lawn and refused to move the vehicle and became aggressive and confrontational. When AP asked him to move the truck, the tenant “charged at me [AP] with a piece of sheet metal” and the tenant’s friend stopped the tenant from assaulting AP.

On February 7, 2022, an undercover operation converged on the home with a warrant. There were 7-8 officers present dressed in full gear with battering rams. Multiple arrests made. The police presence and noise terrified the children as they didn’t know/understand what was happening.

The landlord submitted copies of three (3) warning letters issued to the tenant into evidence and testified that the behavior is unchanged.

Analysis

While I have considered the documentary evidence and the testimony of the landlord, not all details of the submission and arguments have been reproduced in my decision. Only the relevant and important aspects of the claims and my findings are set out.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would

end if notice to end the tenancy were given under s. 47, and (b) granting the landlord an order of possession in respect of the rental unit.

56 (1) A landlord may make an application for dispute resolution to request an order

- a. Ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and
- b. Granting the landlord an order of possession in respect of the rental unit.

Expedited hearings are intended for serious matters and are scheduled on compressed timelines, with short notice to the respondent. *Policy Guideline #51- Expedited Hearings* provides direction for these types of applications.

The Guideline states that the expedited hearing procedure is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant or a tenant has been denied access to their rental unit.

The Guideline reads in part:

Ordinarily, the soonest an application for dispute resolution can be scheduled for hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio, or video recordings, information from the police including testimony, and written communications. Examples include:

1. A witness statement describing violent acts committed by a tenant against a landlord.
2. Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property.
3. Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; o
4. Video and audio recordings that clearly identify a tenant physically, sexually, or verbally harassing another tenant.

To grant an Order of Possession under s. 56(1), I must be satisfied as follows:

56 (2) The directory may make an order specifying an earlier date on which a tenancy ends and the effective date of the order or possession only if satisfied, in the case of a landlord's application,

- a. the tenant or a person permitted on the residential property by the tenant has done any of the following"
 - i. **significantly** interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - ii. **seriously** jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - iii. put the landlord's property at **significant** risk;
 - iv. engaged in illegal activity that
 - A. has caused or is likely to cause damage to the landlord's property,
 - B. has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being or another occupant of the residential property, or
 - C. has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - v. caused **extraordinary** damage to the residential property, and
- b. it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.**

- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy. [emphasis added]

The landlord relied on sections (a) (i) and (ii)

- i. **significantly** interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

- ii. **seriously** jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

I have reviewed the law, policy, heard the affirmed, uncontested testimony of the landlord and reviewed the evidence submitted to the file. I find the landlord has established sufficient grounds to end the tenancy.

I find the tenant, his unauthorized occupants, and guests have **seriously** jeopardized the health and safety of the landlord and his family who reside above the rental unit. Specifically, AP was threatened with a knife by an occupant/guest, the police called and attended to ensure AP's safety while he inspected the suite. Significant damage (discoloration) to the ceiling, the landlord states resulted from significant drug usage, was photographed.

I accept the evidence of the landlord that the tenant and his unauthorized occupants and guests openly use illegal drugs and left needles and razor blades strewn in the landlord's yard and on the street creating a significant hazard for the landlord's children as well as the neighborhood children, the puppy, and the other members of the family and neighboring families.

I accept the landlord's testimony that when the police attended on February 20, that drugs consumed in the bathroom forced the police to evacuate the premises until the "plume" dissipated. I accept the testimony of the landlord that the tenant charged at him with a piece of sheet metal when asked to remove his vehicle from the front lawn.

I find the behavior of the tenant, the unauthorized occupants, and guests unreasonably disturbed the landlord and neighbors when multiple police interventions resulted, a tactical team of 6-7 officers converged on the residence with battering rams and a warrant, along with frequent multiple arrests. The unexpected police presence **significantly** interfered with or unreasonably disturbed the landlord and the neighbors.

I find the landlord provided credible testimony and sufficient evidence to support his claim that the tenant, his unauthorized occupants, and guests pose an imminent danger to the landlord and his family. I find the landlord established, on a balance of probabilities, that the events happened as testified. I find the landlord's account of what transpired to be reliable and believable.

I find the evidence shows that there is a reasonable risk to the health, safety, and wellbeing to the landlord and his family and a high risk of ongoing disturbances.

In summary, taking into consideration the evidence and submissions, I find the landlord has met the burden of proof with respect to the first part of the two-part test pursuant to s. 56 (a)(i) and (ii). viz. the landlord has sufficiently demonstrated the tenant **seriously** jeopardized the health and safety of the landlord with significant drug use and discarded drug paraphernalia littering the yard and street **and significantly** interfered with or

unreasonably disturbed the landlord and family with multiple police visits, the undercover operation, and arrests

I also find the landlord has met the burden of proof with respect to the second part of the test that provides: "It would be unreasonable, or unfair to the landlord or other occupant of the residential property, to wait for a notice to end the tenancy under s. 47 [landlord's notice: cause] to take effect".

I find the landlord has shown it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause, again, in view of the illegal drug use, the pattern of unacceptable behavior that resulted in multiple police interventions, and the threats of violence.

Considering the evidence in aggregate, I find on a balance of probabilities that the landlord has met the onus of proving his claim for an order under s. 56 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

The landlord was successful in his application. I therefore grant the landlord recovery of the \$100.00 filing fee pursuant to section 72(1). The landlord may deduct the \$100.00 from the security deposit.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward.

Conclusion

I grant an Order of Possession pursuant to section 56 (Early End of Tenancy) to the landlord effective on two days' notice. This Order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 72(1) the landlord may recover the \$100.00 filing fee from the tenant's security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 22, 2022